that each party to the negotiation will present, or be asked by the state to present, its view of the appropriate price for the service or element in dispute and the support for its position. The arbitrator then likely will have sufficient information by which to resolve the dispute, without needing guidance from the Commission.[1] Nothing in this process requires the development of specific cost studies or proxies as contemplated by the Commission's Notice.[2]

Indeed, the existence of a Commission pricing rule to be applied in the case of an arbitrated price dispute will itself vitiate the deregulatory, industry-driven negotiating process obviously preferred by Congress. To the extent the Commission pre-defines the outcome of an arbitrated agreement, it will constrain the parties' negotiations to that outcome or range of acceptable outcomes, despite the fact that other mutually acceptable outcomes outside the Commission-mandated range might

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[1] It should be noted that §252(b)(4)(B) provides that if any party refuses or fails to respond to a state commission's request for information, the state commission may resolve the issue "on the basis of the best information available to it from whatever source derived." This is yet another clear indication that Congress did not envision a need for the Commission to provide states with specific guidance in order for them to apply the pricing standards in §252.

[2] Indeed, the Act's repeated instructions to eschew protracted proceedings (e.g., §252(d)(1)(A)(i) and §252(d)(2)(B)(ii)) and to use reasonable approximations of cost (§252(d)(2)(A)(ii)) strongly suggest Congress was more interested in speed than in precision.

exist.[1] This constraint would also affect non-price terms of an agreement, as parties to negotiations tend to evaluate an agreement in its totality, rather than expecting to optimize each individual element thereof. Thus, for example, a party may accept a less desirable price in exchange for more desirable service provisioning. The Commission should resist the temptation to interfere with the independent negotiation process devised by Congress.[2]

Moreover, narrowly prescribed pricing rules would thwart state efforts to effect balanced, pro-competitive rate structures. As the Commission is well aware, prices cannot be established in isolation from the prices for competing and complementary services. Prices for "wholesale" services will ultimately affect prices for their retail counterparts, as well as prices of other "wholesale" options. Thus, in establishing rates for these new "wholesale" interconnection services, states

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[1] We note that binding rules or guidelines differ from "preferred outcomes" or "templates" utilized by some states (e.g., California and New York). New York's template was derived from industry based negotiations. Since the latter are not default outcomes (as might be applied in an arbitration), parties can, and do, successfully negotiate agreements that fall outside the range of "preferred outcomes" or "templates."

[2] While we are mindful of the Commission's understandable concern about the relative strength of the incumbents' negotiating position, Congress also recognized and adequately balanced this by the Act's significant incentives to them to successfully negotiate interconnection agreements.

must often balance complex rate structures and market considerations. Again, we urge the Commission not to constrain states' abilities to effect these balances in the needless pursuit of "perfect" economic efficiency.

B. The Commission May Set Minimum Requirements for Unbundled Network Elements and Minimum Interconnection Standards

1. Unbundled Elements

The NYDPS agrees with the Commission's general intention to develop guidelines for unbundled elements, interconnection, and collocation. We caution, however, that the guidelines should be broad enough to encompass the variety of approaches taken by pro-competitive states. Our comments detail the specific areas where federal guidelines could be implemented, and suggest approaches for developing these guidelines.

In its Notice the Commission proposes a minimum set of network elements which it believes must be unbundled, and seeks comment on whether it should establish minimum provisioning and technical standards to govern such unbundling, and how it might define the "technically feasible points" where interconnections to such elements might occur. (NPRM ¶56) The Commission proposes that the minimum set to be unbundled consist of loops, switches, transport facilities, and signaling and databases. (NPRM ¶ 93).

These proposals are consistent with New York's practices and parallel our own unbundling actions. NYDPS agrees with the Commission that loops, and loop sub-elements as may be appropriately determined, should be made available, and that transport facilities and signaling and database access should be unbundled.[1] We also agree that switching should be unbundled, as explained below.

New York State was among the first states to unbundle switching services. Initially, that unbundling extended to access to the incumbent's port on the line side of the switch (or the portion of the switch that serves end users) and was designed to facilitate the provision of local telephone services by those customers or carriers who desired to provision their own outside plant facilities.[2] Subsequently, access was provided to trunk side ports (or the portion of the switch that faces other

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[1] This unbundling must extend to new entrants as well, particularly where a new entrant's database contains bottleneck information (e.g., directory assistance or call status information) available only from that source.

[2] For example, the initial demand for port services came from large users that desired access, often through the facilities of a competitive access provider, to their DID/DOD ports for the purpose of an alternative routing arrangement. As competitors gained access to telephone number resources and increasingly provisioned facilities to customers directly, the utilization of port services has declined.

switches and used by other carriers to terminate or originate calls) for the purposes of enhancing alternative local transport arrangements.

Recently, in the context of our pending local competition proceeding, several parties have argued in favor of additional switch unbundling like the switching platforms that are being considered in Illinois, and the provision of "operator call completion services" and directory assistance services. The New York Commission is considering this additional unbundling request. The Commission should not, however, conclude that because we are considering this further request that the port-related unbundling we have already implemented is inadequate, or that it is inconsistent with the Act. The Commission's proposals for the unbundling of "direct-trunked and tandem switched transport" essentially require such trunk side "port" unbundling at the tandem and end office switching levels, and we support these proposals.

NYDPS agrees with the Commission's proposal regarding further unbundling of signaling and databases. (NPRM ¶107) We advise, however, that such requirements should be imposed on all local exchange carriers reciprocally as the signaling systems may represent a "bottleneck" to efficient traffic exchanges for both the incumbent and new entrant carriers. Further, new entrants should be required to provide information (e.g., directory

listings) or access to databases which contain such information to other carriers as they represent the sole source for such data and its general availability is in the public interest.[1] We also recommend, in the interest of customers generally, that strict privacy protections be imposed on access to such databases and on the use of the information therein.

The Notice states that New York and other states require LECs to unbundle at least local loops, and that New York has implemented a request-based approach that requires the unbundling of requested elements only, and then only if essential facilities are required (NPRM ¶81).

The Commission is correct that the NYDPS has favored a request-based approach to unbundling the local network. In our view, carriers are in the best position to determine the elements to which they require access, and in what timeframe. Our ONA policy allows carriers to make requests for unbundled elements directly to the incumbent carrier. If disputes arise, they may be brought to us for resolution. However, the New York Commission has never determined that only essential facilities need be unbundled. New York regulations require that segregable

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[1] In this regard, new entrants have access to information (their own customers' numbers) that is of value to other local exchange carriers and their customers. Such information should be generally available under fair terms and conditions.

services and functions requested by users be provided to the extent technically and economically practicable.[1] In practice, the New York Commission has not been presented requests for non-essential network facilities. Carriers are often able to resolve such requests among themselves, or Staff may facilitate the resolution of these issues. This is an appropriate framework for dealing with non-bottleneck elements, as it allows us to focus our efforts on ensuring that carriers have access to those elements that are essential to their provision of service.

The Commission should adopt a guideline for the identification and unbundling of additional network elements similar to New York's Open Network Architecture (ONA) rules. New York's ONA policy envisions a customer-directed unbundling of essential network elements where the costs of the unbundling would be borne by the customer, augmented by a rapid processes for dealing effectively and rapidly with unmet or unrealized ONA requests.[2] The concept of unbundling is codified in our regulations. In practice, we consider many factors in analyzing these requests, chief of which are:

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[1] 16 NYCRR 605.2(a)(3)

[2] Case 88-C-004, supra, Order Instituting Procedures for the Implementation of Open Network Architecture, (issued September 29, 1989).

- availability--is the function available elsewhere, or is it a bottleneck function?
- practicality--can it be done?
- impact--what are the implications of the proposed unbundling for customers and the affected carriers?

Those requesting the service bear the ultimate responsibility for the costs of developing and deploying a requested service or function, and those costs are to be shared by all its users. Also, our policy envisions reciprocal arrangements where all local exchange carriers have an equal obligation to unbundle and interconnect. NYDPS submits that these practices should form the basis for the Commission's unbundling guidelines.

2. Interconnection

The Commission believes uniform interconnection rules would be desirable, and asks whether states should have the ability to experiment with different approaches if there are "technical, demographic, or geographic" reasons for doing so. (NPRM ¶51) It seeks comment on the term "interconnection" and how it might be defined, particularly in light of the pricing obligations imposed by different portions of the Act. (NPRM ¶54) It seeks comment on different approaches states have taken with

regard to interconnection, and asks what might constitute a "technically, feasible point" of interconnection within the incumbent LECs network. (NPRM ¶56) The Commission also seeks comment on "rates, terms, and conditions" related to such interconnections and how it might implement the requirement that interconnections be "equal in quality" to those provided by the incumbent to itself or others. (NPRM ¶63)

Interconnection is a general term used to describe a range of matters related to the integration of telecommunications networks and carriers generally into what has been described as a "network of networks". It can also be used to describe connections between competitive and non-competitive networks and carriers. Interconnection in the context of the Act should be defined as the specific connections between two carriers to facilitate the carriage of communications between them. It does not relate to the carriage of traffic across those networks, but the mere establishment of the connection between them.[1]

The Commission seeks comment on the approaches taken by states that have allowed interconnection. (NPRM ¶52) The Notice states that the NYPSC has established a template that would apply

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[1] We agree with the Commission's description of interconnection (¶ 54) as "facilities and equipment physical linking two networks" and we agree that the pricing rules are those of 251(c)(2), not 251(b)(5).

if parties fail to agree on the terms under which they will interconnect. The default provisions include the availability of two-way trunking facilities and combined trunking arrangements. The Commission invites comment on the advantages and disadvantages of the approaches states have taken, and on whether any elements of the state approaches would be suitable for incorporation into national standards implementing the 1996 Act. (NPRM ¶52)

The Commission has correctly characterized the New York Commission's approach to interconnection. The New York Commission has issued an order setting a basic framework for carrier interconnection, as well as intercarrier compensation and directory listings.[1] This framework was developed through an extensive collaborative process with representatives from all segments of the industry, and is designed to provide the minimum standards under which carriers may interconnect. Our order noted that it was not the New York PSC's intent to prevent carriers from negotiating different terms for the exchange of their traffic, as long as the terms of such agreements were made available to other local carriers on a non-discriminatory basis. The order directed New York Telephone Company to file an

[1] Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation, Case 94-C-0095, Issued and Effective September 27, 1995.

interconnection tariff consistent with the terms of the order, including the compensation provisions, and encouraged other local carriers to concur in this tariff.[1] Concurrence would provide an easy means of implementing the reciprocal compensation, and the tariff would then codify a statewide standard in a practical and efficient manner. A number of carriers have filed such concurrences.

Rather than adopt any explicit rules, the Commission should establish interconnection guidelines that would allow states the ability, in consultation with the affected carriers, to determine precisely where such interconnections should occur if the carriers are unable to do so themselves. In developing appropriate guidelines, it is reasonable to give consideration to existing interconnection arrangements (e.g., interconnections between incumbent, non-competing local exchange carriers).

The Notice is correct that in New York interconnection points are left for the carriers to negotiate (NPRM ¶59). We believe that the carriers are in the best position to determine which points within the network are technically feasible interconnection points, and therefore carrier-to-carrier negotiations are preferable to statewide or national standards.

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[1] Carriers are not required to concur in New York Telephone Company's tariff, and MCI Metro has elected to file its own interconnection tariff.

Carriers may bring disputes to us if any arise during this process.

3. Collocation

The Commission tentatively concludes that it should adopt national standards for collocation. (NPRM ¶67) and seeks comment on collocation models that may be useful as national guidelines. (NPRM ¶69). Collocation is a specific form of interconnection. It describes a situation in which the carriers interconnect by extending their network physically within the premise of another carrier (physical collocation), or where they lease comparable access arrangements (virtual collocation). The Commission should not set specific rules for such collocations and should instead rely upon the state commissions to determine what collocation arrangements are desirable, and the terms and conditions that should be associated with such interconnections. Again, the Commission should consider adopting guidelines for such arrangements rather than specific rules. The guideline we recommend would be to simply require all carriers to afford comparably efficient interconnection to others, and to assure that such interconnections be technically and economically comparable to actual, physical collocation.

The Notice states that New York permits the incumbents to collect "earnest fees" to ensure the good faith nature of

requests for interconnection. (NPRM ¶62). More precisely, this fee is a deposit collected by the incumbent when an applicant requests interconnection at the incumbent's facilities. The NPRM correctly notes that this fee is applied to the charges incurred by the requesting carrier for interconnection.

The Commission states that LECs could use such fees to delay and deter entry, and seeks comment on whether such an approach is consistent with the pro-competitive and deregulatory tenor of the Act. Rochester Telephone Corporation and New York Telephone Company both have tariffed application fees of $7,500. Inasmuch as the fee is generally applied to the construction costs involved with collocation, it is unlikely that this level of fee would pose any impediment to entry for any carrier. Construction costs for a single collocation cage generally are in excess of the application fee. In fact, the New York Commission has never received a complaint regarding the level of this "down payment".

CONCLUSION

For all the reasons above, it is critical that the states and federal government work together to develop policies which recognize that market flexibility is the key to achieving the vision of Congress. The establishment of narrowly crafted binding rules will thwart the intent of Congress.

Respectfully submitted,

Maureen O Helmer/kap

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Dated: May 16, 1996
Albany, New York

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing document by first class mail, postage prepaid, upon all interested parties in this proceeding in accordance with the requirements of the Rule of Procedure.

Dated at Albany, New York, this the 16th day of May 1996.

Karen H. Kovacofsky 1kap
Karen H. Kovacofsky

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